



Billing Code: 4310-MR-W

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2012-0095]

Atlantic Wind Lease Sale 2 (ATLW2) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Rhode Island and Massachusetts, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM proposes to offer for sale, using a multi-factor auction format, two leases that together encompass the Rhode Island and Massachusetts Wind Energy Area (WEA) that was identified on February 24, 2012 (see "Areas Offered for Leasing" below for a description of the WEA and lease areas). In this PSN, you will find information pertaining to the areas available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites comments during a 60-day comment period following this notice. The issuance of the proposed leases resulting from this announcement would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

DATES: Comments should be submitted electronically or postmarked no later than [INSERT DATE 60 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].

All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

The end of the comment period is also the deadline for potential bidders to submit qualification materials. All bidders interested in participating in the lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than [INSERT DATE 60 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically:* <http://www.regulations.gov>. In the entry entitled, “Enter Keyword or ID,” enter BOEM-2012-0095 and then click “search.” Follow the instructions to submit public comments.
2. *Written Comments:* In written form, delivered by hand or by mail, enclose comments in an envelope labeled “Comments on Rhode Island and Massachusetts PSN” to: Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170.
3. *Qualification Materials:* Those submitting qualification materials should contact Jessica Bradley, BOEM Office of Renewable Energy Programs, at 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787-1320, or jessica.bradley@boem.gov.

If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption, “Contains Confidential Information” and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this PSN entitled, “Protection of Privileged or Confidential Information.” Information that is not labeled as privileged or confidential will be regarded by BOEM as subject to public release.

FOR FURTHER INFORMATION CONTACT: Jessica Bradley, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787-1320 or jessica.bradley@boem.gov.

AUTHORITY: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (“the Act”), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

BACKGROUND: The proposed lease areas are the same as the WEA that BOEM announced on February 24, 2012, (see Area Identification announcement available at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>). BOEM published the Notice of Availability (NOA) for the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts* Environmental Assessment (EA) (77 FR 39508) on July 3, 2012. The EA may be found at: <http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

BOEM is currently considering the comments on the EA and possible revisions.

Ongoing consultations concurrent with the preparation of the EA include consultations under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). Once BOEM has completed the EA, and if the EA concludes that the proposed action will not cause significant environmental impacts, BOEM will publish a Finding of No Significant Impact (FONSI).

The proposed lease areas identified in this PSN match the Rhode Island and Massachusetts WEA described as the proposed action and preferred alternative in the EA. In the event that BOEM decides to substantially revise the terms and conditions outlined within this PSN as a result of the completion of the environmental review and consultation process, which will not occur until after the publication of this PSN, BOEM will publish a second PSN that includes the revised terms and conditions and publish it in the *Federal Register* for a 60-day public comment period before moving forward with publication of a Final Sale Notice (FSN). Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

This PSN was developed in consultation with the joint Rhode Island and Massachusetts Renewable Energy Task Force. BOEM received comments from several Task Force members during the development of this PSN, including from the Rhode Island State Energy Office, the City of New Bedford Economic Development Commission, a Task Force member from the Town of Aquinnah, and the National

Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). In addition, the Rhode Island Coastal Resources Management Council forwarded to BOEM comments on the draft PSN and EA that it had received from members of the Habitat Advisory Board established by the State. The Rhode Island State Energy Office requested that BOEM consider non-monetary factors in the multiple auction format and recommended that the Joint Development Agreement (JDA) executed by the State of Rhode Island be awarded a minimum 25 percent discount in the auction. Additional information on the JDA can be found in this notice in the section entitled, "Multiple Factor Definitions." A member of the Rhode Island Habitat Advisory Board expressed concern about publication of the PSN before a FONSI determination has been made; reiterated concerns about areas within the WEA where glacial moraines are located; proposed additional requirements for protection of endangered species, in particular the North Atlantic Right Whale; and requested that BOEM consider implementing a discount for non-monetary values in the auction format. The additional measures proposed for North Atlantic Right Whale protection are similar to those previously developed by a consortium of nongovernmental organizations and wind industry representatives and presented to BOEM for consideration in issuing commercial wind leases off New Jersey, Delaware, Maryland, and Virginia. A Task Force member from the Town of Aquinnah suggested that BOEM consider proposals that provide community benefits in the auction format and expressed concern with the requirements for protection of North Atlantic Right Whales. The City of New Bedford Economic Development Commission expressed concern regarding the inclusion of a discount in the auction format for the State of Rhode

Island's preferred developer. NMFS provided recommendations for language to be clarified in the PSN, as well as in Addendum C of the proposed lease.

FINANCIAL TERMS AND CONDITIONS: This section provides an overview of the basic annual payments required of the Lessee, which will be fully described in the lease.

Rent: The first year's rent payment for the entire leased area is due within 45 calendar days of the date the winning bidder receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the lease Effective Date until commercial operations on the lease commence, i.e., when the generation of electricity begins. The annual rental rate will be \$3.00 per acre, and this rate will be applicable to the entire leased area. For example, for a lease the size of 164,750 acres (the size of the entire WEA), the amount of rent payment will be \$494,250 per year. The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement, 200-feet wide and centered on the transmission cable, is \$70.00 per statute mile. For any such additional acreage required, the Lessee must also pay the greater of \$5.00 per acre per year or \$450.00 per year.

Operating Fee: The initial annual operating fee is prorated and due within 45 calendar days after the commencement of commercial operations on the lease, and subsequent payments are due on or before each Lease Anniversary annually thereafter. The annual operating fee payment is calculated by multiplying an operating fee rate by the imputed wholesale market value of the projected electric power production. For the purposes of this calculation, the imputed market value is the product of the project's annual

nameplate capacity, the total number of hours in the year (8,760), an annual capacity factor, and the historical, annual average regional wholesale power price index.

Operating Fee Rate: The operating fee rate is 0.02 through the eighth year of commercial operations on the lease. Starting in the ninth year of commercial operations, the operating fee rate is 0.04 through the remaining term of the lease.

Nameplate Capacity: The nameplate capacity at the start of each year of commercial operations on the lease as specified in the COP will be used to allow for installation schedules or repowering, recognizing that a project's designed capacity may not be fully available in every year. Using the capacity at the beginning of each year, as specified in the COP, adjusts the nameplate capacity for these schedules.

Capacity Factor: The capacity factor for the first six full years of commercial operations on the lease is set to 0.4 to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth full year, the capacity factor will be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor will be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: The wholesale power price is determined at the time each annual operating fee payment is due. The wholesale power price will be based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast – Mass Hub power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual

State of the Markets Report with specific reference to the summary entitled “Electric Market Overview: Regional Spot Prices.”

Financial Assurance: BOEM will base the amounts of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements will be determined on a case-by-case basis. The amount of financial assurance required to meet all lease obligations includes:

- The projected amount of rent and other payments due to the Federal Government over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations (e.g., fines, liens); and
- The estimated cost of facility decommissioning.

Prior to lease issuance the Lessee must provide: (1) an initial lease-specific bond or other approved means of meeting the Lessor’s initial financial assurance requirements in the amount of \$100,000; and (2) a supplemental bond or other approved means of meeting the Lessor’s supplemental financial assurance requirements in the amount of \$292,494 for Lease OCS A-0486, and \$201,756 for Lease OCS A-0487, to guarantee lease obligations from rental payments due to the Government over the first 12 months of the lease. Additional financial assurances will be required to address decommissioning, operating fee, and other obligations as the lease progresses.

The financial terms can be found in Addendum “B” of the proposed lease, which BOEM has made available with this notice on its website at:

[http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.aspx](http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode%20Island.aspx).

PLACE AND TIME: The auction will be held online. The time that the auction will be held will be published in the FSN. The date has not been finalized at this time, but will be no earlier than 30 days after publication of the FSN in the *Federal Register*.

PUBLIC SEMINAR: BOEM will host a public seminar to introduce potential bidders and other stakeholders to the auction format provided in the PSN, explain the auction rules, and demonstrate the auction process through meaningful examples. The time and place of the seminar will be announced by BOEM and published on the BOEM website. No registration or RSVP will be required in order to attend.

MOCK AUCTION: BOEM will host a mock auction to educate qualified bidders about the procedures to be employed during the auction and to answer questions. The mock auction will take place between the publication of the FSN in the *Federal Register* and the date of the auction. Following publication of the FSN in the *Federal Register*, details of the mock auction will be distributed to those eligible to participate in the auction. All qualified bidders that intend to participate in the auction are strongly encouraged to participate in the mock auction. Bidders will be eligible to participate in the Mock Auction if they have been legally, technically, and financially qualified, as discussed below.

BID DEPOSIT AND MINIMUM BID: A bid deposit is an advance cash deposit submitted to BOEM. No later than 14 calendar days following publication of the FSN, each bidder must have submitted a bid deposit (equal to a minimum cash bid) of at least \$5.00 per acre, or fraction thereof, offered for sale. Approximately 97,498 acres would be offered for sale as Lease OCS-A 0486 (North Zone), and approximately 67,252 acres would be offered as Lease OCS-A 0487 (South Zone) in this auction. The bid deposit

amount of \$5.00 per acre represents the minimum bid that BOEM proposes for this lease sale. Therefore, the minimum acceptable bid will be \$487,490 for Lease OCS-A 0486 (North Zone), and \$336,260 for Lease OCS-A 0487 (South Zone). The required bid deposit for any participant intending to bid on both leases will be \$5.00 per acre for the combined total acreage being offered, which equals \$823,750. Any participant intending to bid on only one of the leases must submit a bid deposit of no less than \$5.00 per acre for the larger area being offered (Lease OCS-A 0486 (North Zone)), which equals \$487,490. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Following publication of the FSN, each bidder must complete the Bidder's Financial Form included in the FSN. BOEM has made a copy of the proposed form available with this notice on its website at: [http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island](http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode%20Island). This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* website to submit a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations a successful bidder owes to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund the bid deposit to unsuccessful bidders.

AREAS OFFERED FOR LEASING: The proposed lease area was identified as the Rhode Island and Massachusetts Wind Energy Area (WEA) on February 24, 2012 (see

Area Identification announcement available at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx>). The proposed lease area offshore Rhode Island and Massachusetts comprises 13 whole OCS blocks and 26 sub-blocks encompassing 164,750 acres. The area available for sale will be auctioned as two leases, Lease OCS-A 0486 (North Zone) and Lease OCS-A 0487 (South Zone). The North Zone consists of 97,498 acres, and the South Zone consists of 67,252 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas and lease activities can be found in Addendum “A” of the proposed leases, which BOEM has made available with this notice on its website at: http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode_Island.aspx.

The two areas that will be offered for leased within the Rhode Island/Massachusetts WEA are the North Zone and the South Zone, which are separated by an exclusion area surrounding Cox Ledge. This division into two Zones is based on the consideration of a number of factors, including: the prevailing winds as demonstrated in the RI Ocean Special Area Management Plan, which is available at: http://www.crmc.ri.gov/samp_ocean/finalapproved/RI_Ocean_SAMP.pdf; the project scale requirements under state laws and regulations (including Rhode Island General Laws, Chapter 39-26.1); the JDA executed by the State of Rhode Island; developer responses to the August 2011 Call for Information and Nominations; allowance for buffer zones between projects; and proximity to onshore infrastructure and markets.

Each zone is expected to be capable of supporting a project of at least 350 MW in nameplate capacity. The North Zone may be capable of supporting over 1,000 MW and is expected to have the advantage of closer proximity to onshore infrastructure.

However, the South Zone could potentially support a project of 1,000 MW and is expected to be attractive due to its expansion opportunities to the south and east in potential future lease sales.

Map of the Area Offered for Leasing: A map of the areas and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL:

http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode_Island.aspx.

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787-1300, Fax: (703) 787-1708.

WITHDRAWAL OF BLOCKS: BOEM reserves the right to withdraw areas from this lease sale prior to the execution of a lease.

LEASE TERMS AND CONDITIONS: BOEM has included proposed lease terms and conditions for OCS commercial wind leases in the Rhode Island and Massachusetts WEA in Addendum “C” of the proposed lease. BOEM reserves the right to apply additional terms and conditions that are consistent with the terms of the lease to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. The proposed lease, including Addendum “C”, is available on BOEM’s website at: http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode_Island.aspx. The proposed lease consists of an instrument with 18 sections and the following six attachments:

Addendum “A” (Description of Leased Area and Lease Activities);

Addendum “B” (Lease Term and Financial Schedule);

Addendum “C” (Lease Specific Terms, Conditions, and Stipulations);

Addendum “D” (Project Easement);

Addendum “E” (Rent Schedule); and

Appendix A (High Resolution Geophysical Surveys and Analysis for the Identification or Reporting of Archaeological Resources).

Addenda “A”, “B”, and “C” provide detailed descriptions of lease terms and conditions.

Addenda “D” and “E” will be completed at the time of COP approval.

After considering comments on the PSN and these proposed provisions, BOEM will publish final lease terms and conditions in a FSN.

The lease form included as part of this proposed lease has been updated since its publication on February 3, 2012. A discussion of specific changes to the lease form is available separately on BOEM’s website at: http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Lease_Forms.

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within six months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least six months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may include in its COP a request to develop its commercial lease in phases. If a leaseholder requests and BOEM approves phased development, this approval will not affect the length of the preliminary, site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development,

including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements set forth in the regulatory provisions in 30 CFR 585.605-613 for the full commercial lease area.

QUALIFICATIONS— WHO MAY BID: Any potential bidder that has not already submitted a complete set of qualification materials must do so by the end of the comment period of this PSN. To be eligible to participate in the auction, each potential bidder must be legally, technically and financially qualified under BOEM’s regulations at 30 CFR 585.106-107 by the time the FSN for this sale is published. Please note that technical and financial qualifications are lease specific; it is not sufficient to have been technically and financially qualified to pursue a project offshore another state.

Guidance and examples of the appropriate documentation demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of *Guidelines for the Minerals Management Service Renewable Energy Framework*, available on BOEM’s website at: <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx>. Guidance regarding how you may demonstrate your technical and financial qualifications is provided in a document entitled, *Qualification Guidelines to Acquire and Hold Renewable Energy Leases and Grants and Alternate Use Grants on the U.S. Outer Continental Shelf*: (<http://boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx>). BOEM strongly recommends that you refer to this guidance before submitting your qualification

materials, as the guidance has been updated recently. You must submit the documentation necessary to demonstrate your legal, technical, and financial qualifications to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy. In your qualification materials, provide a general description of the project you would like to construct on the lease area sought in this sale, including estimates of the project area and total nameplate capacity of the proposed facilities.

Please note that it may take a number of weeks for you to establish your legal, technical, and financial qualifications. We advise potential bidders planning to participate in this sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. BOEM will find any potential bidder whose qualification package is incomplete at the time the FSN for this sale is published in the *Federal Register* to have failed to establish its qualifications to participate in the sale, and, therefore, will be unable to participate in the sale.

AUCTION PROCEDURES:

Summary

For the sale of these leases, BOEM will use a multi-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or “variables,” in determining the outcome of the auction. There will be two such variables considered by BOEM in this auction – (1) a cash bid, and (2) a credit if a bidder holds a Joint Development Agreement (JDA) or a Power Purchase Agreement (PPA), as defined below. A multi-factor auction, wherein

both monetary and nonmonetary bid variables are considered, is provided for under BOEM's regulations at 30 CFR §§585.220(a)(4) and 585.221(a)(6).

Under a multiple-factor bidding format, as set forth at 30 CFR §§585.220(a)(4), BOEM may consider many factors as part of a bid. The regulation states that one bid proposal per bidder will be accepted, but does not further specify the procedures to be followed in the multiple-factor format. This multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulation leaves to BOEM the determination of how to administer the multiple-factor auction format in order to try to best achieve BOEM's goals of encouraging bidding, enhancing price discovery, and ensuring that BOEM receives a fair return for the leases auctioned, as required by the Outer Continental Shelf Lands Act, (OCSLA), 43 USC 1337(p)(2)(A).

BOEM's regulations at 30 CFR §§585.220(a)(4) permit a multi-round auction provided only one cash bid proposal per zone or set of zones per bidder, per round of the auction, is accepted. This regulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulation by enabling BOEM to benefit from both the consideration of more than one factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each zone being offered. In each round, each bidder will have the opportunity to submit one cash bid per zone at the asking price. A bid submitted at the asking price in a particular round is referred to as a "live bid" and a live bid signifies that the bidder is willing to pay that auction round's asking price for a

particular zone. A bidder must submit a live bid on at least one of the zones in each round to remain “active” into the next round of the auction. As long as at least two live bids are submitted at the asking price on any zone in a particular round, the auction continues, and the next round is held. If there is only one live bid for a zone, and that bidder is not bidding on the other zone, BOEM automatically carries that bid forward into the next round. If BOEM carries a bid forward, the bid will be considered the equivalent of a live bid for the purpose of determining bidder eligibility. If there is more than one live bid for a zone, the stated price for that zone is raised in each subsequent round until there is only one live bid or no live bids for that zone. The auction concludes when there are one or zero live bids for each zone.

The series of rounds and the escalating asking prices set by BOEM will allow consideration of the first variable – the cash bid. BOEM will set one asking price per zone in each round. Each bidder will either place a live bid at this asking price or not, but no bidder will be permitted more than one bid per zone in any one round. Thus, bidders will not be outbidding each other in each round, but will be limited to one bid per zone per round, at the asking price, (or at a price subject to a credit due to the second variable, as explained below).

The second variable – a credit for holding a JDA or PPA of at least 350 megawatts each – will be applied throughout the auction rounds as a form of imputed credit against the amount of a cash bid proposal made by a particular bidder in a particular round. A bidder holding only a qualified JDA will receive a credit of 15%, a bidder holding only a qualified PPA will receive a credit of 25 percent, and a bidder that holds both will receive the larger of the two possible credit amounts, i.e. 25 percent. The

total percentage credit is limited to 25 percent in the auction to address concerns about creating too large an advantage to certain bidders in the auction, as discussed in BOEM’s Auction Format Information Request (76 FR 76174). BOEM considered the overall impact and relative strength of the JDA compared to that of a PPA in enabling a lessee to install a viable project on the OCS in setting the JDA credit at 15 percent. In the case of a bidder holding a credit and bidding on more than one zone, the credit will be applied only to the zone being offered at the higher asking price. By way of example, a bidder holding a qualified JDA and bidding on two zones, one with an asking price of \$1,000,000 and one with an asking price of \$2,000,000, will receive a 15 percent credit against the higher priced \$2,000,000 bid in that round, obligating the bidder to a payment of \$1,700,000, or 15 percent less than the asking price for that zone, and \$1,000,000 for the other zone, equal to the asking price for that other zone. Each bid in each round will thus be considered based on both factors – the amount of the cash bid proposed and the amount of a potential credit for holding a qualified JDA or PPA.

BOEM’s regulations concerning multi-factor bidding require the use of a panel 30 CFR 585.222 (d), whose members are selected by the agency, to help weigh the variables considered in such an auction. The regulations state that BOEM “will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel....” 30 CFR § 585.224(h). The panel will evaluate any purported JDA or PPA proffered by a bidder to determine whether it is acceptable to BOEM, and therefore whether it will qualify for a credit for its holder. The panel will determine the winning bids for each zone on the basis of the Stage 1 and Stage 2 rules set forth herein.

Details of the Auction Process

Bidding – Live Bids

Each bidder is allowed to submit live bids on one or more zones based on its eligibility at the opening of each round. A bidder's initial eligibility to bid on either one or both zones in the opening round of the auction is determined based on the amount of the bid deposit submitted by the bidder prior to the auction. The required deposit for bidding on one zone is equal to the minimum bid of the zone with the most acreage. If a bidder wants to bid on both zones, the bidder is required to submit a deposit equal to the sum of the minimum bids for both zones. As the auction continues, a bidder's eligibility is determined by the number of live bids submitted in the round prior to the current round.

Before each round of the auction, BOEM raises the asking price for each zone that received more than one live bid in the previous round, while the asking price for zones that received one or no live bids in the previous round remains the same. Bidders must submit a live bid in each round of the auction (or have a bid automatically carried forward by BOEM) to remain active and continue bidding in future rounds. Between rounds, all bidders who are still active are informed, with respect to each zone, of the asking price for the upcoming round and the number of live bids submitted in the previous round. In cases where one of the zones which a bidder has bid on in the previous round has competition, i.e., the zone received two or more live bids, the bidder must independently submit bids identifying which zones it continues to be interested in acquiring in the current round. In cases where the bidder has bid on only one zone in the

previous round and there is no competition for that zone, i.e., only that bidder has submitted a live bid, BOEM will automatically carry forward the bid for that bidder by recording that the bidder “submitted” a live bid in the current round on that zone at the previous round’s asking price. In these latter cases i.e., when the bidder has bid on only one zone and BOEM has carried that bid forward, switching bids to other zones or submitting an intra-round bid are prohibited, as is reducing the number of zones on which the bidder has bid. Additional auction rounds occur as long as at least one of the zones offered receives two or more live bids in the previous round. The auction concludes at the end of the round in which the number of live bids received on each zone falls to one or zero.

A bidder may not increase the number of zones it bids on from one round to a subsequent round. Provided one or more live bids were received on at least one of the zones that the bidder itself has bid on in the previous round, a bidder may voluntarily reduce the number of the zones it bids on from one round to the next, switch its bids from one zone to another, or submit an “intra-round” bid in conjunction with reducing its eligibility as to the number of zones on which it can bid in future rounds. (Intra-round bids are discussed below.) Otherwise, in general, if there are no other bidders on any of the zones on which the bidder has bid in the previous round, the bidder must maintain its existing bids and BOEM will automatically record the bidder as having “submitted” its standing live bids at the previous round’s asking price. For this two-zone sale, however, this situation can only occur for the case of one zone, because if there had been only a single live bid on each zone in the previous round, the auction would have closed.

Thus, if a bidder placed a live bid for both zones in the previous round, it can submit live bids for both zones in the current round. The bidder also has the option of submitting a live bid for only one of the zones or none of the zones in the current round.

If a bidder placed a live bid on only the South Zone in the previous round, and there was at least one other competing bid for that zone, then the bidder can submit a live bid on either the North or South Zone in the current round, or not bid on either zone, but it cannot bid on both zones. If there are no competing bids on the South Zone, the bidder cannot switch its bid to the North Zone or reduce its eligibility by not bidding on either zone. Once a bidder fails to submit a live bid for any zone (or have a bid carried forward by BOEM), it must depart the auction and will no longer be allowed to submit bids for any zone in any subsequent round.

Bidding – Intra-round Bids

Subject to certain conditions, bidders are allowed to submit an “intra-round” bid in any round after the first round. Intra-round bids are similar to what were termed “exit bids” in BOEM’s Auction Format Information Request (76 FR 76174). In contrast to exit bids, however, intra-round bids do not necessarily require that the bidder exit the auction – only that the number of live bids that the bidder is eligible to submit must be reduced.

An intra-round bid consists of a single offer price for exactly the same zone or set of zones that the bidder placed live bids on in the previous round. The single offer price must be greater than the sum of the asking prices for the zones bid on in the previous round and less than the sum of the asking prices for these zones in the current round. A bidder may not submit an intra-round bid for a single zone or set of zones in the current

round when this bidder was the only bidder placing a live bid for all of these zone(s) in the previous round, i.e., an intra-round bid is prohibited in the current round when the asking price does not increase from the previous round on all of the zones on which the bidder bid (or was credited with bidding on) in the previous round. This situation can only arise in this two-zone sale for a bid on a single zone, because the auction would have closed in the previous round if both zones had only a single live bid.

A bidder may submit both live bids and an intra-round bid in the same round, as long as the bidder reduces the number of live bids by at least one zone in the current round compared to the previous round. The zones on which the live bids are submitted may coincide with some of the zones included in the intra-round bid. In the specific case of this two-zone sale, this situation can arise only if the bidder has submitted live bids on both zones in the previous round, chooses to submit an intra-round bid in the current round (consisting of both zones as required in this example), and also submits a live bid at the current round's asking price on one of the zones in the bidder's intra-round bid.

A bidder may submit additional intra-round bids in subsequent rounds, following the same rules as applied to the first intra-round bid. A bidder now eligible to bid on one zone may submit an intra-round bid on one zone, but cannot also submit any live bids, because its eligibility to submit live bids from having submitted this intra-round bid is reduced from one to zero zones.

Intra-round bids are not considered to be live bids for the purpose of determining whether to conclude the auction or for determining whether to increase the asking price for a particular zone. When a bidder submits an intra-round bid on one zone, the bidder's bid eligibility is reduced to zero, and this bid represents the bidder's best-and-final offer

prior to leaving the auction. In contrast, a bidder's intra-round bid for both zones represents a best-and-final offer for both zones and reduces a bidder's eligibility in the auction to one or zero zones, based on the number of live bids submitted in the round. In this manner, bidders are able to express their maximum bid amount for both zones and an individual zone prior to reducing their eligibility.

For example, consider the case of a bidder who has bid on both zones in previous rounds, and hence is eligible to continue bidding on both zones in the current round. Suppose the asking prices for the North and South Zones were \$750,000 and \$600,000 in the previous round and are now \$800,000 and \$600,000 in the current round, respectively. These results reflect that in the previous round the bidder had competition for the North Zone (because the asking price was increased in the current round), but not for the South Zone. The bidder may only enter a single, intra-round bid for both zones that it bid on in the previous round. This single offer price must be more than \$1,350,000 and less than \$1,400,000, and the bidder must simultaneously reduce its eligibility to submit live bids from two zones to one or zero zones. The bidder can satisfy this requirement by choosing to submit (along with its intra-round bid) a single live bid of \$800,000 for the North Zone or \$600,000 for the South Zone, or choose not to submit any live bids and hence exit the auction.

If the bidder had only bid on one zone in the previous round, it may be eligible to submit an intra-round bid during the current round. If its previous round's bid was for the North Zone, the bidder could submit an intra-round bid for that zone of more than \$750,000 and less than \$800,000, reduce its live bid eligibility to zero, and hence exit the auction. Alternatively, if the bidder's previous round's bid was on the South Zone, it

cannot submit an intra-round bid, because the current round's asking price is unchanged from the asking price in the previous round, as there were no other competitive bids. In this case, since the bidder had no competition for the South Zone, its sole bid of \$600,000 from the previous round is automatically recorded by BOEM as a submitted live bid of the same amount in the current round.

Stages – Stage 1

After the bidding ends, a panel will determine the winning bids in two stages. This determination, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and on confirmation of the absence of conduct detrimental to the integrity of the competitive auction.

In Stage 1, a zone is awarded to the bidder with a live bid in the final round of the auction. A bidder who submits a final round live bid for a zone is guaranteed to be the winning bidder for that zone. A bidder who is awarded a zone only as a result of a final round live bid is obligated to pay the cash bid amount for that zone (i.e., the asking price of that zone in the final round less any credit earned).

If both zones are awarded to bidders in Stage 1, the second award stage would not be necessary. If at least one zone is not awarded in Stage 1, which received either an intra-round bid within any round or a live bid in a prior-to-final round, then a second award stage would be conducted.

Stages – Stage 2

In Stage 2, all of the remaining prior-to-final round live bids and any intra-round bids received during the auction are considered alongside one another to award any remaining unsold zones. Determination of the winning Stage 2 bids is based on the

principle of maximization of gross auction revenue subject to the award of zones in Stage 1.

Live bids from previous rounds are considered in the same way as intra-round bids received within any round, i.e., at a single aggregate price per round per bidder based on the sum of the asking prices for each zone in the round the bid was received. For example, if a bidder placed live bids in a previous round for both the North and South Zones and the asking prices in that round for each zone were \$600,000 and \$750,000, respectively, the bid would be evaluated at \$1,350,000 for award purposes.

Thus, in Stage 2, bids from bidders in each applicable round are considered as unique packages of intra-round bids and live bids. A bidder is able to win bids submitted from only a single round, which will consist of either all of the zones in an intra-round bid or all of the zones on which it submitted live bids in the winning round for that bidder. A bidder cannot win only some of the zones on which it submitted live bids in a round. Rather, a bidder wins all of the zones or none of them from one round based on its live bids. Further, a bidder may only win one intra-round bid and may not win a set of live bids and an intra-round bid – it wins one or the other based on auction revenue maximization subject to the Stage 1 awards.

In particular, any intra-round bids or sets of prior-to-final round live bids from one bidder, which include a zone awarded in Stage 1 to another bidder, are eliminated from consideration. Thus, if Bidder A was awarded the South Zone in Stage 1, and Bidder B submitted either an intra-round bid or set of live bids for both the North Zone and South Zone in one or more previous rounds, those bids of Bidder B would be

eliminated because they overlap with a zone that has already been awarded to Bidder A in Stage 1.

Also, any intra-round bids or sets of prior-to-final round live bids from a bidder who itself was awarded one or more zones in Stage 1 are eliminated unless such bids represent a superset of the zones (i.e., in this sale, both zones) won by the bidder in Stage 1, i.e., those bids must contain all the zones won by this bidder in Stage 1 to be considered in Stage 2. For example, if a bidder was already awarded the North Zone in Stage 1, any previous rounds' bids by that bidder for just the South Zone would be eliminated from consideration, whereas that bidder's previous rounds' bids for both zones would be considered for award in Stage 2.

Acceptance of a bidder's superset bid over the final round bid would depend on whether the superset bid was consistent with maximizing gross auction revenue. To demonstrate, suppose only the North Zone received a final round live bid, equal to \$1,000,000, and the same bidder submitted the highest previous round's set of live bids or an intra-round bid for both the North and South Zones with a gross auction price of \$1,400,000. In this case, the bidder's superset bid of \$1,400,000 for both zones would replace the final round live bid from this same bidder for only the North Zone of \$1,000,000.

In summary, unsold zones following the Stage 1 evaluations are considered for award to the bidders in Stage 2 for eligible intra-round bids and sets of live bids in a manner that would yield the highest gross auction revenue to BOEM given the Stage 1 awards. If more than one combination of remaining previous-round live and intra-round

bids exist that would yield the same highest gross auction revenue to the seller, while preserving the zones awarded in Stage 1, the resulting tie is settled by a random draw.

All zone awards are based on the bids submitted during the auction at their asking and intra-round bid (i.e., “as-bid”) prices. For each bidder, the as-bid price will be considered to have a cash component and an imputed credit component, if applicable, as described in the following section. The amount each bidder is obligated to pay at the conclusion of the auction will be equal to the cash component of the as-bid auction price (i.e., the as-bid auction price less the imputed amounts associated with the credits, as described in the following section).

Factor Two Credits: Prior to the auction, BOEM will convene a panel (as provided in BOEM’s regulations, discussed above) to evaluate whether and to what extent each bidder is eligible for a credit applicable to the as-bid auction price for one of the zones in each round of the auction, as described below. In order to receive the JDA or PPA credit a bidder must be legally, technically, and financially qualified to acquire a commercial OCS wind lease, and must not be affiliated with any other bidding entity also seeking credit for the same JDA or PPA.

The percentage credit is determined based on the panel’s evaluation of required documentation submitted by the bidders as of the deadline specified in the Final Sale Notice. Bidders will be informed prior to the first round of the auction about the percentage credit applicable to their bid for a single zone. Then, in subsequent rounds, bidders will be provided information showing how their as-bid auction prices are affected by the credit imputed to their bid to determine their net payment due to BOEM, should their bids prevail as winning bids in the award stages. This process is conceptually

similar to one in which the multiple bid factors are combined into an aggregate score for the purpose of awarding zones, but is more transparent to bidders and facilitates the bidding process in a dynamic, multi-factor, multiple round auction process, such as we propose to use for this sale.

The percentage amount of credit imputed will be based on the greater of the following two conditions associated with the development activities within the Rhode Island lease sale area:

- A bidder having entered into one or more qualified joint development agreements (JDAs) supporting 350 MW or more of total capacity will receive a credit of 15 percent; or
- A bidder having entered into one or more qualified Power Purchase Agreements (PPAs) supporting 350 MW or more of total capacity under contract will receive a credit of 25 percent.

The panel will determine whether a proffered JDA or PPA is qualified to receive a credit, based on the definitional information provided below.

A bidder with both a qualified JDA and a qualified PPA is eligible to receive the larger of the two credits. For example, if a bidder's winning bid for its highest-priced zone is \$1,000,000 and the bidder has entered into a JDA for 400 MW and a PPA for 570 MW, the bidder would qualify for a credit of 15 percent for the JDA and 25 percent for the PPA, and be eligible for an award equal to the larger of the two credit amounts, in this case 25 percent. Accordingly, the bidder would have an imputed credit of \$250,000 for

its winning bid and would pay BOEM the cash component of its bid, which would be \$750,000.

In another example, if the bidder entered a JDA for 400 MW and a PPA for 170 MW, then under the first condition, the bidder with a qualified JDA would receive a credit of 15 percent, while under the second condition, the bidder would not receive any credit since the capacity under the PPA contract falls below the 350 MW threshold level. The bidder would be eligible for an award equal to 15 percent, and hence would have an imputed credit of \$150,000 and pay BOEM \$850,000 (the cash component of its bid) for its winning gross auction priced zone of \$1,000,000.

The bidding software interface will be tailored to each bidder based on the percentage credit awarded to the bidder. In each round of the auction, the bidder will be provided with the gross and net stated auction prices for each zone, along with the aggregate bid price the bidder would be obligated to pay if the zones were to be awarded to them based on that round's bids, both with and without the bidder's credit. For a bid on both zones in a given round, the software interface would highlight the zone with the highest stated auction price among the zones selected by the bidder to which the credit would be applied in each round. For example, suppose a bidder is eligible for a 15 percent credit, and the gross stated auction prices for the North and South Zones in the current round are \$1,000,000 and \$800,000 respectively. The potential net payment to be made by the bidder for its live bids for both zones would be shown as a net bid of \$850,000 for the higher-priced North Zone, and a gross bid of \$800,000 for the lower-priced South Zone.

The same principle is applied when an intra-round bid, rather than a live bid, is offered. If an intra-round bid includes only one zone, the percent credit will be applied to the zone's asking price in the previous round. Note that the credit does not apply to the full amount of the intra-round bid, i.e., it does not apply to the increment above the asking price in the previous round. For example, say the stated auction price for the North Zone was \$800,000 in the previous round and \$1,000,000 in the current round and a bidder who was awarded a 15 percent credit submits an intra-round bid price of \$900,000 for the zone. The bidder would be obligated to pay \$780,000 if its bid is successful. This amount would reflect an imputed \$120,000 credit to its \$900,000 bid price which would be calculated by applying its 15 percent credit to the previous-round's asking price of \$800,000, and then subtracting the amount of that calculation \$120,000 from its bid of \$900,000.

In the case of an intra-round bid for both zones, the highest priced zone will be determined based on the asking prices of both zones in the round previous to the submission of the intra-round bid. Continuing with the previous example, assume the stated auction price for the South Zone is \$500,000 in both the previous and current rounds, and for the North Zone the stated auction prices are the same as before, i.e., \$800,000 in the previous round and \$1,000,000 in the current round. Suppose the bidder offers an intra-round bid price of \$1,400,000 for both zones. In this instance, the price of the North Zone (\$800,000) is greater than the South Zone (\$500,000) in the previous round, and the dollar value of the credit is calculated to be 15 percent of \$800,000, equal to \$120,000 as before. So, the bidder would be obligated to pay \$1,280,000 for its intra-round bid if successful.

BOEM considered alternative specifications of these conditions, including options to have the maximum credit for the JDA and PPA be 10 percent and 15 percent, respectively, and where the total credit would then be the sum of two conditions. BOEM also considered the option to provide a pro-rated credit for JDAs and PPAs involving less than the 350 MW level anticipated to be needed to support a viable project. BOEM recognizes that few if any developers will have entered into PPA at the time of the proposed lease sale, but has elected to include the discussion of PPA and the alternative specifications in this PSN to obtain comment that will be considered for both this and future lease sales.

Factor Two Definitions: The definitions below will apply to the factors for which bidders may earn a credit.

Joint development agreement (JDA) is a binding agreement between a State and a legal entity that proposes to develop renewable (wind) energy, which sets forth the rights, obligations, and certain economic development activities of the parties in connection with the development of an offshore wind project. The legal entity named in a JDA must be selected through a competitive selection process, such as a request for proposals (RFP), that is conducted by a state adjacent to the wind energy area issuing and entering into the JDA agreement, where the subsequent submitted proposals are evaluated by a State agency, committee, or public utility board. The JDA will qualify if the panel determines that the agreement includes the following identifiable factors: (1) sufficient specificity to the size, timing, and location of the proposed project on the OCS; (2) the financial commitment of the State, the identified legal entity, and/or a third party (buyer of power), if applicable, included in the agreement; (3) the developmental, financial, and/or

regulatory processes through which the State will support the identified legal entity that proposes to develop renewable (wind) energy; (4) significant project milestones; (5) the ramifications for not meeting said milestones; and (6) any exclusionary rights awarded to said identified legal entity.

Power purchase agreement (PPA) is any legally enforceable contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or similar legal authority. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the State's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. In order to qualify, a PPA must contain the following terms or supporting documentation:

- (i) A complete description of the proposed project;
- (ii) Identification of both the electricity Generator and (Buyer) that will enter into a long term contract;
- (iii) A time line for permitting, licensing, and construction;
- (iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

- (v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;
- (vi) The term for the long term contract;
- (vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and
- (viii) Copies of or citations to interconnection filings related to the PPA.

Additional Information Regarding the Auction Format

Specific details about certain administrative aspects of the auction sale process will be described in the FSN. These aspects include how much the asking price will increase in various stages of the auction, the duration of each bidding round, the amount of time provided between rounds, the number of rounds expected per day, and the days on which the auction process will continue, if necessary, beyond the first day. Bidders may expect multiple rounds per day to occur during normal business hours. The amount of time allowed for bidders to enter bids and the time between rounds may be reduced as the auction progresses based on the patterns of bidding, to increase the pace of the auction. At the start of each day, bidders will be notified of the round schedule for that day.

ACCEPTANCE, REJECTION OR RETURN OF BIDS: BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited

to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and not considered for acceptance.

PROCESS FOR ISSUING THE LEASE: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to each winning bidder. Within 10 business days after receiving the lease copies, each winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay the balance of the bonus bid (bid amount less the bid deposit).

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has processed the winning bidder's payment. Please note the required timelines for providing financial assurance. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM.

BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the lessee receives the lease copies, the lessee must pay the first year's rent.

ANTI-COMPETITIVE BEHAVIOR: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anticompetitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of the lease sale."

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid pursuant to its regulations at 30 CFR 585.222(a)(2).

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid in a particular location;

- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (*e.g.*, heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see:

<http://www.justice.gov/atr/public/business-resources.html>, or consult counsel.

POST-AUCTION CERTIFICATION: In addition to the steps described in the section entitled, “Process for Issuing the Lease,” following the lease sale, each winning bidder will be required to certify the following, in accordance with 18 U.S.C. § 1001 (Fraud and False Statements):

I certify that [name of qualified bidder] did not engage in anticompetitive bidding behavior in violation of Federal law, BOEM’s regulations, or auction procedures.

I certify that this bid is made in a good faith effort to win a lease to engage in the development of renewable energy resources.

NON-PROCUREMENT DEBARMENT AND SUSPENSION REGULATIONS:

Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy Lessee must comply with the U.S. Department of the Interior’s non-procurement debarment and suspension regulations at 2 CFR 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

FINAL SALE NOTICE: BOEM will consider comments received or postmarked during the PSN comment period in preparing a FSN that will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease in the Rhode Island and Massachusetts WEA. The FSN will be published in the *Federal Register* at least 30 days before the lease sale is conducted and will provide the date and time of the auction. The possibility also exists that there could be a second PSN, with another 60-day public comment period, prior to issuance of the FSN.

FORCE MAJEURE: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a force majeure event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703-787-1300 or access the BOEM website at:

<http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

APPEALS: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under

30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION:

Freedom of Information Act: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information “Contains Confidential Information” and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. § 470w–3(a)):

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that

disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as confidential.

Tommy P. Beaudreau
Director, Bureau of Ocean Energy Management

__November 27, 2012__
Date

[FR Doc. 2012-29096 Filed 11/30/2012 at 8:45 am; Publication Date: 12/03/2012]